

108TH CONGRESS  
1ST SESSION

# S. 509

To modify the authority of the Federal Energy Regulatory Commission to conduct investigations, to increase the penalties for violations of the Federal Power Act and the Natural Gas Act, to authorize the Chairman of the Federal Energy Regulatory Commission to contract for consultant services, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 4, 2003

Mrs. FEINSTEIN (for herself, Mr. FITZGERALD, Mr. LUGAR, Mr. HARKIN, Ms. CANTWELL, Mr. WYDEN, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To modify the authority of the Federal Energy Regulatory Commission to conduct investigations, to increase the penalties for violations of the Federal Power Act and the Natural Gas Act, to authorize the Chairman of the Federal Energy Regulatory Commission to contract for consultant services, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

### 3   **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Energy Market Over-  
5   sight Act”.

1 **SEC. 2. JURISDICTION OF THE FEDERAL ENERGY REGU-**  
 2 **LATORY COMMISSION OVER ENERGY TRAD-**  
 3 **ING MARKETS.**

4 Section 402 of the Department of Energy Organiza-  
 5 tion Act (42 U.S.C. 7172) is amended by adding at the  
 6 end the following:

7 “(i) **JURISDICTION OVER DERIVATIVES TRANS-**  
 8 **ACTIONS AND OTHER FINANCIAL TRANSACTIONS .—**

9 “(1) **REFERRAL.—**

10 “(A) **IN GENERAL.—**To the extent that the  
 11 Commission determines that any contract for a  
 12 derivative transaction or other financial trans-  
 13 action that comes before the Commission is not  
 14 under the jurisdiction of the Commission, the  
 15 Commission shall refer the contract to the ap-  
 16 propriate Federal agency.

17 “(B) **NO EFFECT ON AUTHORITY.—**The  
 18 authority of the Commission or any Federal  
 19 agency shall not be limited or otherwise affected  
 20 based on whether the Commission has or has  
 21 not referred a contract described in subpara-  
 22 graph (A).

23 “(2) **MEETINGS.—**A designee of the Commis-  
 24 sion shall meet quarterly with a designee of the  
 25 Commodity Futures Trading Commission, the Secu-  
 26 rities Exchange Commission, the Federal Trade

1 Commission, the Department of Justice, the Depart-  
 2 ment of the Treasury, and the Federal Reserve  
 3 Board to discuss—

4 “(A) conditions and events in energy trad-  
 5 ing markets; and

6 “(B) any changes in Federal law (includ-  
 7 ing regulations) that may be appropriate to reg-  
 8 ulate energy trading markets.

9 “(3) LIAISON.—The Commission shall, in co-  
 10 operation with the Commodity Futures Trading  
 11 Commission, maintain a liaison between the Com-  
 12 mission and the Commodity Futures Trading Com-  
 13 mission.”.

14 **SEC. 3. INVESTIGATIONS BY THE FEDERAL ENERGY REGU-**  
 15 **LATORY COMMISSION UNDER THE NATURAL**  
 16 **GAS ACT AND FEDERAL POWER ACT.**

17 (a) INVESTIGATIONS UNDER THE NATURAL GAS  
 18 ACT.—Section 14(c) of the Natural Gas Act (15 U.S.C.  
 19 717m(c)) is amended—

20 (1) by striking “(c) For the purpose of” and in-  
 21 serting the following:

22 “(c) TAKING OF EVIDENCE.—

23 “(1) IN GENERAL.—For the purpose of”;

24 (2) by striking “Such attendance” and inserting  
 25 the following:

1           “(2) NO GEOGRAPHIC LIMITATION.—The at-  
2           tendance”;

3           (3) by striking “Witnesses summoned” and in-  
4           serting the following:

5           “(3) EXPENSES.—Any witness summoned”;  
6           and

7           (4) by adding at the end the following:

8           “(4) AUTHORITIES.—Notwithstanding any  
9           other provision of law, the exercise of the authorities  
10          of the Commission under this subsection shall not be  
11          subject to the consent of the Office of Management  
12          and Budget or any other Federal agency.”.

13          (b) INVESTIGATIONS UNDER THE FEDERAL POWER  
14          ACT.—Section 307(b) of the Federal Power Act (16  
15          U.S.C. 825f(b)) is amended—

16               (1) by striking “(b) For the purpose of” and in-  
17               serting the following:

18               “(b) TAKING OF EVIDENCE.—

19                       “(1) IN GENERAL.—For the purpose of”;

20               (2) by striking “Such attendance” and inserting  
21               the following:

22                       “(2) NO GEOGRAPHIC LIMITATION.—The at-  
23                       tendance”;

24               (3) by striking “Witnesses summoned” and in-  
25               serting the following:

1 “(3) EXPENSES.—Any witness summoned”;  
 2 and

3 (4) by adding at the end the following:

4 “(4) AUTHORITIES.—Notwithstanding any  
 5 other provision of law, the exercise of the authorities  
 6 of the Commission under this subsection shall not be  
 7 subject to the consent of the Office of Management  
 8 and Budget or any other Federal agency.”.

9 **SEC. 4. INCREASE IN CRIMINAL PENALTIES UNDER THE**  
 10 **NATURAL GAS ACT AND FEDERAL POWER**  
 11 **ACT.**

12 (a) CRIMINAL PENALTIES UNDER THE NATURAL  
 13 GAS ACT.—Section 21 of the Natural Gas Act (15 U.S.C.  
 14 717t) is amended—

15 (1) in subsection (a), by striking “punished by  
 16 a fine of not more than \$5,000 or by imprisonment  
 17 for not more than two years, or both” and inserting  
 18 “imprisoned not more than 5 years, fined not more  
 19 than \$1,000,000, or both”; and

20 (2) in subsection (b), by striking “\$500 for  
 21 each and every day during which such offense oc-  
 22 curs” and inserting “\$50,000 for each day of each  
 23 violation”.

24 (b) CRIMINAL PENALTIES UNDER THE FEDERAL  
 25 POWER ACT.—

(1) GENERAL PENALTIES.—Section 316 of the Federal Power Act (16 U.S.C. 825o) is amended—

(A) in subsection (a), by striking “punished by a fine of not more than \$5,000 or by imprisonment for not more than two years or both” and inserting “imprisoned not more than 5 years, fined not more than \$1,000,000, or both”; and

(B) in subsection (b), by striking “\$500 for each and every day during which such offense occurs” and inserting “\$50,000 for each day of each violation”.

(2) ENFORCEMENT OF CERTAIN PROVISIONS.—Section 316A of the Federal Power Act (16 U.S.C. 825o–1) is amended—

(A) by striking subsection (a) and inserting the following:

“(a) VIOLATIONS.—It shall be unlawful for any person—

“(1) to violate any provision of part II (including any rule or order issued under a provision of that part); or

“(2) to fail to comply, within a time period specified by the Commission, with—

1 “(A) any written request by the Commis-  
 2 sion or a member of the staff of the Commis-  
 3 sion for information; or

4 “(B) a formal investigation or proceeding  
 5 under this part.”; and

6 (B) in subsection (b)—

7 (i) by striking “section 211, 212, 213  
 8 or 214 or any provision of any rule or  
 9 order thereunder” and inserting the fol-  
 10 lowing: “part II (including any rule or  
 11 order issued under a provision of that  
 12 part) or fails to comply in a timely manner  
 13 with any written request for information  
 14 by the Commission or a member of the  
 15 staff of the Commission or in a formal in-  
 16 vestigation or proceeding under this part”;  
 17 and

18 (ii) by striking “\$10,000 for each day  
 19 that such violation continues” and insert-  
 20 ing “\$50,000 for each day of each viola-  
 21 tion”.

22 **SEC. 5. REFUND EFFECTIVE DATE.**

23 Section 206(b) of the Federal Power Act (16 U.S.C.  
 24 824e(b)) is amended—

(1) in the second sentence, by striking “the date 60 days” and all that follows and inserting “the date of filing of the complaint nor later than the date that is 150 days after the date of filing of the complaint, unless the Commission determines that the complaint could not have been brought earlier because of fraud, intentional misrepresentation, or any similar act by the public utility named in the complaint, in which case the refund effective date shall be the date on which the rate, charge, classification, rule, regulation, practice, or contract that is found to be unjust, unreasonable, unduly discriminatory, or preferential came into effect.”; and

(2) in the third sentence—

(A) by striking “date 60 days after the publication” and inserting “date of publication”; and

(B) by striking “expiration of such 60-day period” and inserting “the publication date, unless the Commission determines that the motion could not have been made earlier because of fraud, intentional misrepresentation, or any similar act by the public utility named in the motion, in which case the refund effective date shall be the date on which the rate, charge,



1 classification, rule, regulation, practice, or con-  
 2 tract that is found to be unjust, unreasonable,  
 3 unduly discriminatory, or preferential came into  
 4 effect”.

5 **SEC. 6. CONSULTING SERVICES.**

6 Title IV of the Department of Energy Organization  
 7 Act (42 U.S.C. 7171 et seq.) is amended by adding at  
 8 the end the following:

9 **“SEC. 408. CONSULTING SERVICES.**

10 “(a) IN GENERAL.—The Chairman may contract for  
 11 the services of consultants to assist the Commission in car-  
 12 rying out any responsibilities of the Commission under  
 13 this Act, the Federal Power Act (16 U.S.C. 791a et seq.),  
 14 or the Natural Gas Act (15 U.S.C. 717 et seq.).

15 “(b) APPLICABLE LAW.—In contracting for consult-  
 16 ant services under subsection (a), if the Chairman deter-  
 17 mines that the contract is in the public interest, the Chair-  
 18 man, in entering into a contract, shall not be subject to—

19 “(1) section 5, 253, 253a, or 253b of title 41,  
 20 United States Code; or

21 “(2) any law (including a regulation) relating to  
 22 conflicts of interest.”.

1 **SEC. 7. LEGAL CERTAINTY FOR TRANSACTIONS IN EXEMPT**  
 2 **COMMODITIES.**

3 Section 2 of the Commodity Exchange Act (7 U.S.C.  
 4 2) is amended by striking subsections (g) and (h) and in-  
 5 serting the following:

6 “(g) OFF-EXCHANGE TRANSACTIONS IN EXEMPT  
 7 COMMODITIES.—

8 “(1) DEFINITIONS.—In this subsection:

9 “(A) COVERED ENTITY.—The term ‘cov-  
 10 ered entity’ means—

11 “(i) an electronic trading facility; and

12 “(ii) a dealer market.

13 “(B) DEALER MARKET.—

14 “(i) IN GENERAL.—The term ‘dealer  
 15 market’ has the meaning given the term by  
 16 the Commission.

17 “(ii) INCLUSIONS.—The term ‘dealer  
 18 market’ includes each bilateral or multilat-  
 19 eral agreement, contract, or transaction  
 20 determined by the Commission, regardless  
 21 of the means of execution of the agree-  
 22 ment, contract, or transaction.

23 “(2) EXEMPTION FOR TRANSACTIONS NOT ON  
 24 TRADING FACILITIES.—Except as provided in para-  
 25 graph (4), nothing in this Act shall apply to an

1 agreement, contract, or transaction in an exempt  
2 commodity that—

3 “(A) is entered into solely between persons  
4 that are eligible contract participants at the  
5 time the persons enter into the agreement, con-  
6 tract, or transaction; and

7 “(B) is not entered into on a trading facil-  
8 ity.

9 “(3) EXEMPTION FOR TRANSACTIONS ON COV-  
10 ERED ENTITIES.—Except as provided in paragraphs  
11 (4), (5), and (7), nothing in this Act shall apply to  
12 an agreement, contract, or transaction in an exempt  
13 commodity that is—

14 “(A) entered into on a principal-to-prin-  
15 cipal basis solely between persons that are eligi-  
16 ble contract participants at the time at which  
17 the persons enter into the agreement, contract,  
18 or transaction; and

19 “(B) executed or traded on a covered enti-  
20 ty.

21 “(4) REGULATORY AND OVERSIGHT REQUIRE-  
22 MENTS.—

23 “(A) IN GENERAL.—An agreement, con-  
24 tract, or transaction described in paragraph (2)  
25 or (3) (and the covered entity on which the

1 agreement, contract, or transaction is executed)  
 2 shall be subject to—

3 “(i) sections 5b, 12(e)(2)(B), and  
 4 22(a)(4);

5 “(ii) the provisions relating to manip-  
 6 ulation and misleading transactions under  
 7 sections 4b, 4c(a), 4c(b), 4o, 6(c), 6(d), 6e,  
 8 6d, 8a, and 9(a)(2); and

9 “(iii) the provisions relating to fraud  
 10 and misleading transactions under sections  
 11 4b, 4c(a), 4c(b), 4o, and 8a.

12 “(B) TRANSACTIONS EXEMPTED BY COM-  
 13 MISSION ACTION.—Notwithstanding any exemp-  
 14 tion by the Commission under section 4(c), an  
 15 agreement, contract, or transaction described in  
 16 paragraph (2) or (3) shall be subject to the au-  
 17 thorities in clauses (i), (ii), and (iii) of subpara-  
 18 graph (A).

19 “(5) COVERED ENTITIES.—An agreement, con-  
 20 tract, or transaction described in paragraph (3) and  
 21 the covered entity on which the agreement, contract,  
 22 or transaction is executed, shall be subject to (to the  
 23 extent the Commission determines appropriate)—

24 “(A) section 5a, to the extent provided in  
 25 section 5a(g)) and 5d;

1 “(B) consistent with section 4i, a require-  
2 ment that books and records relating to the  
3 business of the covered entity on which the  
4 agreement, contract, or transaction is executed  
5 be made available to representatives of the  
6 Commission and the Department of Justice for  
7 inspection for a period of at least 5 years after  
8 the date of each transaction, including—

9 “(i) information relating to data entry  
10 and transaction details sufficient to enable  
11 the Commission to reconstruct trading ac-  
12 tivity on the covered entity; and

13 “(ii) the name and address of each  
14 participant on the covered entity author-  
15 ized to enter into transactions; and

16 “(C) in the case of a transaction or cov-  
17 ered entity performing a significant price dis-  
18 covery function for transactions in the cash  
19 market for the underlying commodity, subject  
20 to paragraph (6), the requirements (to the ex-  
21 tent the Commission determines appropriate by  
22 regulation) that—

23 “(i) information on trading volume,  
24 settlement price, open interest, and open-

1 ing and closing ranges be made available  
 2 to the public on a daily basis;

3 “(ii) notice be provided to the Com-  
 4 mission in such form as the Commission  
 5 may require;

6 “(iii) reports be filed with the Com-  
 7 mission (such as large trader position re-  
 8 ports); and

9 “(iv) consistent with section 4i, books  
 10 and records be maintained relating to each  
 11 transaction in such form as the Commis-  
 12 sion may require for a period of at least 5  
 13 years after the date of the transaction.

14 “(6) PROPRIETARY INFORMATION.—In carrying  
 15 out paragraph (5)(C), the Commission shall not—

16 “(A) require the real-time publication of  
 17 proprietary information;

18 “(B) prohibit the commercial sale or li-  
 19 censing of real-time proprietary information;  
 20 and

21 “(C) publicly disclose information regard-  
 22 ing market positions, business transactions,  
 23 trade secrets, or names of customers, except as  
 24 provided in section 8.

1           “(7) NOTIFICATION, DISCLOSURES, AND OTHER  
2       REQUIREMENTS FOR COVERED ENTITIES.—A cov-  
3       ered entity subject to the exemption under para-  
4       graph (3) shall (to the extent the Commission deter-  
5       mines appropriate)—

6           “(A) notify the Commission of the inten-  
7       tion of the covered entity to operate as a cov-  
8       ered entity subject to the exemption under  
9       paragraph (3), which notice shall include—

10           “(i) the name and address of the cov-  
11       ered entity and a person designated to re-  
12       ceive communications from the Commis-  
13       sion;

14           “(ii) the commodity categories that  
15       the covered entity intends to list or other-  
16       wise make available for trading on the cov-  
17       ered entity in reliance on the exemption  
18       under paragraph (3);

19           “(iii) certifications that—

20           “(I) no executive officer or mem-  
21       ber of the governing board of, or any  
22       holder of a 10 percent or greater eq-  
23       uity interest in, the covered entity is  
24       a person described in any of subpara-

1 graphs (A) through (H) of section  
2 8a(2);

3 “(II) the covered entity will com-  
4 ply with the conditions for exemption  
5 under this subsection; and

6 “(III) the covered entity will no-  
7 tify the Commission of any material  
8 change in the information previously  
9 provided by the covered entity to the  
10 Commission under this paragraph;  
11 and

12 “(iv) the identity of any derivatives  
13 clearing organization to which the covered  
14 entity transmits or intends to transmit  
15 transaction data for the purpose of facili-  
16 tating the clearance and settlement of  
17 transactions conducted on the covered enti-  
18 ty subject to the exemption under para-  
19 graph (3);

20 “(B)(i) provide the Commission with ac-  
21 cess to the trading protocols of the covered enti-  
22 ty and electronic access to the covered entity  
23 with respect to transactions conducted in reli-  
24 ance on the exemption under paragraph (3);  
25 and



1           “(ii) on special call by the Commission,  
2           provide to the Commission, in a form and man-  
3           ner and within the period specified in the spe-  
4           cial call, such information relating to the busi-  
5           ness of the covered entity as a covered entity  
6           exempt under paragraph (3), including informa-  
7           tion relating to data entry and transaction de-  
8           tails with respect to transactions entered into in  
9           reliance on the exemption under paragraph (3),  
10          as the Commission may determine appro-  
11          priate—

12                   “(I) to enforce the provisions specified  
13                   in paragraph (4);

14                   “(II) to evaluate a systemic market  
15                   event; or

16                   “(III) to obtain information requested  
17                   by a Federal financial regulatory authority  
18                   to enable the authority to fulfill the regu-  
19                   latory or supervisory responsibilities of the  
20                   authority;

21           “(C)(i) on receipt of any subpoena issued  
22           by or on behalf of the Commission to any for-  
23           eign person that the Commission believes is  
24           conducting or has conducted transactions in re-  
25           liance on the exemption under paragraph (3) on

1 or through the covered entity relating to the  
2 transactions, promptly notify the foreign person  
3 of, and transmit to the foreign person, the sub-  
4 poena in a manner that is reasonable under the  
5 circumstances, or as specified by the Commis-  
6 sion; and

7 “(ii) if the Commission has reason to be-  
8 lieve that a person has not timely complied with  
9 a subpoena issued by or on behalf of the Com-  
10 mission under clause (i), and the Commission in  
11 writing directs that a covered entity relying on  
12 the exemption under paragraph (3) deny or  
13 limit further transactions by the person, deny  
14 that person further trading access to the cov-  
15 ered entity or, as applicable, limit that access of  
16 the person to the covered entity for liquidation  
17 trading only;

18 “(D) comply with the requirements of this  
19 subsection applicable to the covered entity and  
20 require that each participant, as a condition of  
21 trading on the covered entity in reliance on the  
22 exemption under paragraph (3), agree to com-  
23 ply with all applicable law;

24 “(E) certify to the Commission that the  
25 covered entity has a reasonable basis for believ-

1           ing that participants authorized to conduct  
 2           transactions on the covered entity in reliance on  
 3           the exemption under paragraph (3) are eligible  
 4           contract participants;

5           “(F) maintain sufficient capital, commensurate with the risk associated with transactions conducted on the covered entity; and

8           “(G) not represent to any person that the covered entity is registered with, or designated, recognized, licensed, or approved by the Commission.  
 11           mission.

12           “(8) HEARING.—A person named in a subpoena referred to in paragraph (7)(C) that believes the person is or may be adversely affected or aggrieved by action taken by the Commission under this subsection, shall have the opportunity for a prompt hearing after the Commission acts under procedures that the Commission shall establish by rule, regulation, or order.

20           “(9) PRIVATE REGULATORY ORGANIZATIONS.—

21           “(A) DELEGATION OF FUNCTIONS UNDER CORE PRINCIPLES.—A covered entity may comply with any core principle under subparagraph (B) that is applicable to the covered entity

1 through delegation of any relevant function  
2 to—

3 “(i) a registered futures association  
4 under section 17; or

5 “(ii) another registered entity.

6 “(B) CORE PRINCIPLES.—The Commission  
7 may establish core principles requiring a cov-  
8 ered entity to monitor trading to—

9 “(i) prevent fraud and manipulation;

10 “(ii) prevent price distortion and dis-  
11 ruptions of the delivery or cash settlement  
12 process;

13 “(iii) ensure that the covered entity  
14 has adequate financial, operational, and  
15 managerial resources to discharge the re-  
16 sponsibilities of the covered entity; and

17 “(iv) ensure that all reporting, record-  
18 keeping, notice, and registration require-  
19 ments under this subsection are discharged  
20 in a timely manner.

21 “(C) RESPONSIBILITY.—A covered entity  
22 that delegates a function under subparagraph  
23 (A) shall remain responsible for carrying out  
24 the function.

1           “(D) NONCOMPLIANCE.—If a covered enti-  
 2           ty that delegates a function under subpara-  
 3           graph (A) becomes aware that a delegated func-  
 4           tion is not being performed as required under  
 5           this Act, the covered entity shall promptly take  
 6           action to address the noncompliance.

7           “(E) VIOLATION OF CORE PRINCIPLES.—

8           “(i) IN GENERAL.—If the Commission  
 9           determines, on the basis of substantial evi-  
 10          dence, that a covered entity is violating  
 11          any applicable core principle specified in  
 12          subparagraph (B), the Commission shall—

13                  “(I) notify the covered entity in  
 14                  writing of the determination; and

15                  “(II) afford the covered entity an  
 16                  opportunity to make appropriate  
 17                  changes to bring the covered entity  
 18                  into compliance with the core prin-  
 19                  ciples.

20           “(ii) FAILURE TO MAKE CHANGES.—

21           If, not later than 30 days after receiving a  
 22           notification under clause (i)(I), a covered  
 23           entity fails to make changes that, as deter-  
 24           mined by the Commission, are necessary to  
 25           comply with the core principles, the Com-

1 mission may take further action in accord-  
 2 ance with this Act.

3 “(F) RESERVATION OF EMERGENCY AU-  
 4 THORITY.—Nothing in this paragraph limits or  
 5 affects the emergency powers of the Commis-  
 6 sion provided under section 8a(9).

7 “(10) NO EFFECT ON OTHER AUTHORITY.—  
 8 This subsection shall not affect the authority of the  
 9 Federal Energy Regulatory Commission under the  
 10 Federal Power Act (16 U.S.C. 791a et seq.) or the  
 11 Natural Gas Act (15 U.S.C 717 et seq.).”.

12 **SEC. 8. PROHIBITION OF FRAUDULENT TRANSACTIONS.**

13 Section 4b of the Commodity Exchange Act (7 U.S.C.  
 14 6b) is amended by striking subsection (a) and inserting  
 15 the following:

16 “(a) PROHIBITION.—It shall be unlawful for any per-  
 17 son, directly or indirectly, in or in connection with any  
 18 account, or any offer to enter into, the entry into, or the  
 19 confirmation of the execution of, any agreement, contract,  
 20 or transaction subject to this Act—

21 “(1) to cheat or defraud or attempt to cheat or  
 22 defraud any person (but this paragraph does not im-  
 23 pose on parties to transactions executed on or sub-  
 24 ject to the rules of designated contract markets or  
 25 registered derivative transaction execution facilities a

1 legal duty to provide counterparties or any other  
 2 market participants with any material market infor-  
 3 mation);

4 “(2) willfully to make or cause to be made to  
 5 any person any false report or statement, or willfully  
 6 to enter or cause to be entered for any person any  
 7 false record (but this paragraph does not impose on  
 8 parties to transactions executed on or subject to the  
 9 rules of designated contract markets or registered  
 10 derivative transaction execution facilities a legal duty  
 11 to provide counterparties or any other market par-  
 12 ticipants with any material market information);

13 “(3) willfully to deceive or attempt to deceive  
 14 any person by any means whatsoever (but this para-  
 15 graph does not impose on parties to transactions ex-  
 16 ecuted on or subject to the rules of designated con-  
 17 tract markets or registered derivative transaction  
 18 execution facilities a legal duty to provide  
 19 counterparties or any other market participants with  
 20 any material market information); or

21 “(4) except as permitted in written rules of a  
 22 board of trade designated as a contract market or  
 23 derivatives transaction execution facility on which  
 24 the agreement, contract, or transaction is traded  
 25 and executed—

1 “(A) to bucket an order;

2 “(B) to fill an order by offset against 1 or  
3 more orders of another person; or

4 “(C) willfully and knowingly, for or on be-  
5 half of any other person and without the prior  
6 consent of the person, to become—

7 “(i) the buyer with respect to any sell-  
8 ing order of the person; or

9 “(ii) the seller with respect to any  
10 buying order of the person.”.

11 **SEC. 9. FERC LIAISON.**

12 Section 2(a)(9) of the Commodity Exchange Act (7  
13 U.S.C. 2(a)(9)) is amended by adding at the end the fol-  
14 lowing:

15 “(C) LIAISON WITH FEDERAL ENERGY  
16 REGULATORY COMMISSION.—The Commission  
17 shall, in cooperation with the Federal Energy  
18 Regulatory Commission, maintain a liaison be-  
19 tween the Commission and the Federal Energy  
20 Regulatory Commission.”.

21 **SEC. 10. CRIMINAL AND CIVIL PENALTIES.**

22 (a) ENFORCEMENT POWERS OF COMMISSION.—Sec-  
23 tion 6(c) of the Commodity Exchange Act (7 U.S.C. 9,  
24 15) is amended in paragraph (3) of the tenth sentence—



1           (1) by inserting “(A)” after “assess such per-  
2       son”; and

3           (2) by inserting after “each such violation” the  
4       following: “, or (B) in any case of manipulation of,  
5       or attempt to manipulate, the price of any com-  
6       modity, a civil penalty of not more than the greater  
7       of \$1,000,000 or triple the monetary gain to such  
8       person for each such violation,”.

9       (b) MANIPULATIONS AND OTHER VIOLATIONS.—Sec-  
10   tion 6(d) of the Commodity Exchange Act (7 U.S.C. 13b)  
11   is amended in the first sentence—

12           (1) by striking “paragraph (a) or (b) of section  
13       9 of this Act” and inserting “subsection (a), (b), or  
14       (f) of section 9”; and

15           (2) by striking “said paragraph 9(a) or 9(b)”  
16       and inserting “subsection (a), (b), or (f) of section  
17       9”.

18       (c) NONENFORCEMENT OF RULES OF GOVERNMENT  
19   OR OTHER VIOLATIONS.—Section 6b of the Commodity  
20   Exchange Act (7 U.S.C. 13a) is amended—

21           (1) in the first sentence—

22                   (A) by inserting “section 2(g)(9),” after  
23                   “sections 5 through 5c,”; and

24                   (B) by inserting before the period at the  
25                   end the following: “, or, in any case of manipu-

1           lation of, or an attempt to manipulate, the price  
 2           of any commodity, a civil penalty of not more  
 3           than \$1,000,000 for each such violation”; and  
 4           (2) in the second sentence, by inserting before  
 5           the period at the end the following: “, except that  
 6           if the failure or refusal to obey or comply with the  
 7           order involved any offense under section 9(f), the  
 8           registered entity, director, officer, agent, or employee  
 9           shall be guilty of a felony and, on conviction, shall  
 10          be subject to penalties under section 9(f)”.

11          (d) ACTION TO ENJOIN OR RESTRAIN VIOLA-  
 12          TIONS.—Section 6c(d) of the Commodity Exchange Act (7  
 13          U.S.C. 13a–1(d)) is amended by striking “(d)” and all  
 14          that follows through the end of paragraph (1) and insert-  
 15          ing the following:

16          “(d) CIVIL PENALTIES.—In any action brought  
 17          under this section, the Commission may seek and the  
 18          court shall have jurisdiction to impose, on a proper show-  
 19          ing, on any person found in the action to have committed  
 20          any violation—

21                 “(1) a civil penalty in the amount of not more  
 22                 than the greater of \$100,000 or triple the monetary  
 23                 gain to the person for each violation; or

24                 “(2) in any case of manipulation of, or an at-  
 25                 tempt to manipulate, the price of any commodity, a

1 civil penalty in the amount of not more than the  
 2 greater of \$1,000,000 or triple the monetary gain to  
 3 the person for each violation.”.

4 (e) VIOLATIONS GENERALLY.—Section 9 of the Com-  
 5 modity Exchange Act (7 U.S.C. 13) is amended—

6 (1) by redesignating subsection (f) as sub-  
 7 section (e); and

8 (2) by adding at the end the following:

9 “(f) PRICE MANIPULATION.—It shall be a felony  
 10 punishable by a fine of not more than \$1,000,000 for each  
 11 violation or imprisonment for not more than 10 years, or  
 12 both, together with the costs of prosecution, for any per-  
 13 son—

14 “(1) to manipulate or attempt to manipulate  
 15 the price of any commodity in interstate commerce,  
 16 or for future delivery on or subject to the rules of  
 17 any registered entity;

18 “(2) to corner or attempt to corner any such  
 19 commodity;

20 “(3) knowingly to deliver or cause to be deliv-  
 21 ered (for transmission through the mails or inter-  
 22 state commerce by telegraph, telephone, wireless, or  
 23 other means of communication) false or misleading  
 24 or knowingly inaccurate reports concerning market  
 25 information or conditions that affect or tend to af-

1       fect the price of any commodity in interstate com-  
 2       merce; or

3           “(4) knowingly to violate section 4 or 4b, any  
 4       of subsections (a) through (e) of subsection 4e, or  
 5       section 4h, 4o(1), or 19.”.

6   **SEC. 11. CONFORMING AMENDMENTS.**

7       (a) Section 2 of the Commodity Exchange Act (7  
 8   U.S.C. 2) is amended—

9           (1) in subsection (d)(1), by striking “section  
 10       5b” and inserting “section 5a(g), 5b,”;

11          (2) in subsection (e)—

12           (A) in paragraph (1), by striking “, 2(g),  
 13       or 2(h)(3)”;

14           (B) in paragraph (3), by striking  
 15       “2(h)(5)” and inserting “2(g)(7)”;

16          (3) by redesignating subsection (i) as subsection  
 17       (h); and

18          (4) in subsection (h) (as redesignated by sub-  
 19       paragraph (C))—

20           (A) in paragraph (1)—

21           (i) by striking “No provision” and in-  
 22       serting “IN GENERAL.—Subject to sub-  
 23       section (g), no provision”; and

24           (ii) in subparagraph (A)—

1 (I) by striking “section 2(c),  
 2 2(d), 2(e), 2(f), or 2(g) of this Act”  
 3 and inserting “subsection (c), (d), (e),  
 4 or (f)”; and

5 (II) by striking “section 2(h)”  
 6 and inserting “subsection (g)”; and

7 (B) in paragraph (2), by striking “No pro-  
 8 vision” and inserting “IN GENERAL.—Subject  
 9 to subsection (g), no provision”.

10 (b) Section 4i of the Commodity Exchange Act (7  
 11 U.S.C. 6i) is amended in the first sentence by inserting  
 12 “, or pursuant to an exemption under section 4(c)” after  
 13 “transaction execution facility”.

14 (c) Section 8a(9) of the Commodity Exchange Act (7  
 15 U.S.C. 12a(9)) is amended—

16 (1) by inserting “or covered entity under sec-  
 17 tion 2(g)” after “direct the contract market”;

18 (2) by striking “on any futures contract”; and

19 (3) by inserting “or covered entity under sec-  
 20 tion 2(g)” after “given by a contract market”.

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